

SUMMARY MINUTES OF THE SAINT PAUL CITY COUNCIL Thursday, July 5, 2007 - 3:30 p.m.

CITY COUNCIL CHAMBERS, 3RD FLOOR City Hall and Court House 15 West Kellogg Boulevard

The meeting was called to order at 3:30 p.m. by Council President Lantry.

Present – 6 – Benanav, Bostrom, Harris, Lantry, Montgomery, Thune Absent – 1 – Helgen (excused)

CONSENT AGENDA (Items 1 - 35)

NOTE: ALL ITEMS LISTED UNDER CONSENT AGENDA WILL BE ENACTED BY ONE MOTION. THERE WILL BE NO SEPARATE DISCUSSION OF THESE ITEMS. IF DISCUSSION IS DESIRED BY A COUNCILMEMBER, THAT ITEM WILL BE REMOVED FROM THE CONSENT AGENDA AND CONSIDERED SEPARATELY.

Councilmember Bostrom moved approval of the Consent Agenda.

Adopted Yeas - 6 Nays - 0

COMMUNICATIONS AND ADMINISTRATIVE ORDERS

- Claims of CMR/Qwest Claims, Raymond J. Hessler, Paul G. Hillestad, Peter N. Kittleson, Song Vang, and Laura L. Weidmann.
 Referred to Risk Management
- 2. Letter from the Department of Planning and Economic Development announcing a public hearing before the City Council on July 18, 2007 to receive comment on the Summary of the Railroad Island Plan.
- 3. Letter from the Department of Planning and Economic Development announcing a public hearing before the City Council on July 18, 2007 to receive comment on the Summary of the District 10/Como Plan.
- 4. Letters from the Department of Safety and Inspections declaring 963 Burr Street and 1000 DeSoto Street as nuisance properties. (For notification purposes only; public hearings will be scheduled at a later date if necessary.)

FOR ACTION

5. Resolution – 07-550 – Approving the Maintenance Labor Agreement between the City of Saint Paul and the Operative Plasterers and Cement Masons International Association, Local 633. (Laid over from June 27 for adoption)

Adopted Yeas - 6 Nays - 0

6. Resolution – 07-572 – Approving the Memorandum of Agreement between the City and the Professionals Employees Association, Inc. for employees in Information Services Division of the Office of Technology regarding on-call procedures/ compensation. (To be laid over one week for adoption)

Laid over to July 11 for adoption Yeas - 6 Nays - 0

7. Resolution – 07-573 – Approving the Memorandum of Agreement between the City and AFSCME Local #1842 for a pilot project within Saint Paul Regional Water Services for the job classifications of Water Utility Technician I, II, and III. (To be laid over one week for adoption)

Laid over to July 11 for adoption Yeas - 6 Nays - 0

- 8. Resolution 07-574 Approving the Memorandum of Agreement between the City and the International Brotherhood of Electrical Workers Local #110 for the 2007 Wage and Fringe Adjustment. (To be laid over one week for adoption)

 Laid over to July 11 for adoption Yeas 6 Nays 0
- 9. Resolution 07-575 Establishing the rate of pay for the new classification of Water Resource Coordinator in Grade 19 of Bargaining Unit 06, Professional Employees Association.

Adopted Yeas - 6 Nays - 0

10. Resolution – 07-576 – Appointing Mayor Coleman to the League of Minnesota Cities Board of Directors.

Adopted Yeas - 6 Nays - 0

11. Resolution – 07-577 – Amending Council File 07-396 and deleting the assessment for property at 128 Cook Avenue East.

Adopted Yeas - 6 Nays - 0

12. Resolution – 07-578 – Approving the use of Neighborhood STAR Investment Initiative Program Funds for the Raymond Gordon and Marshall Median projects in Ward 4. Adopted Yeas – 6 Nays – 0

13. Resolution – 07-579 – Canceling eleven (11) outstanding registered bills for the Hallie Q. Brown Community Center.

Adopted

$$Yeas - 6$$

$$Nays - 0$$

14. Resolution – 07-580 – Accepting a grant from the Corporation for National and Community Service to provide up to twenty Ameri-Corps*VISTA members for the City of Saint Paul VISTA program.

Adopted

$$Yeas - 6$$

$$Nays - 0$$

15. Resolution – 07-581 – Approving Cable Access-St. Paul, Inc. (d/b/a Saint Paul Neighborhood Network – SPNN) amended April 10, 2007 By-Laws.

Adopted

$$Yeas - 6$$

$$Nays - 0$$

16. Resolution – 07-582 – Memorializing City Council action taken June 13, 2007 denying the appeal of William Madden, Jr. to a decision of the Board of Zoning Appeals granting a side yard setback variance in order to construct a sunroom addition at 2215 Como Avenue. [ZF 07-081619]

Adopted

$$Yeas - 6$$

$$Nays - 0$$

17. Resolution – 07-583 – Authorizing the Department of Planning and Economic Development to submit five (5) City of Saint Paul applications to the Metropolitan Council for Livable Communities Demonstration Account funding for 2008.

Adopted

$$Yeas - 6$$

$$Nays - 0$$

18. Resolution – 07-584 – Amending the 2007 adopted Capital Improvement Budget for the sidewalk reconstruction program by recognizing a transfer from the ROW assessment fund rather than use of street improvement bonds.

Adopted

$$Yeas - 6$$

$$Nays - 0$$

19. Resolution – 07-585 – Approving a license agreement with Magnolia Blossom to locate and operate a cruise and/or charter service at the Watergate Marina from January 1, 2008 through December 31, 2012.

Adopted

$$Yeas - 6$$

$$Nays - 0$$

20. Resolution – 07-586 – Authorizing the Police Department to accept a donation from the Saint Paul Police Foundation to pay for training for 100 law enforcement officials throughout the Twin Cities metro area and members of the Twin Cities Security Partnership on instructions and guidance relating to the arrest and detention of foreign national and related issues.

Adopted

$$Yeas - 6$$

$$Nays - 0$$

21. Resolution – 07-587 – Authorizing the Police Department to accept a Safe & Sober grant from the Minnesota Department of Public Safety.

Adopted Yeas - 6 Nays - 0

22. Resolution – 07-588 – Authorizing the Police Department to enter into a 2005 Buffer Zone Protection Grant amendment with the Minnesota Department of Public Safety for funding for equipment to enhance security at critical infrastructure sites in the City of Saint Paul.

Adopted Yeas - 6 Nays - 0

23. Resolution – 07-589 – Memorializing City Council action taken June 20, 2007 imposing adverse action against all licenses held by Billy Neng Yang, d/b/a Asian Cuisine, 945 Rice Street, Suite A.

Adopted Yeas - 6 Nays - 0

24. Resolution – 07-590 – Approving adverse action against the Entertainment B license application submitted by G – 8 Inc., d/b/a Starting Gate Pub, 2516 – 7th Street West. Adopted Yeas – 6 Nays – 0

25. Resolution – 07-591 – Approving adverse action against the Liquor On Sale – Over 200 Seats (A), Liquor On Sale-Sunday, Entertainment (B), and Restaurant (C) – Limited license applications submitted by Selvig, Inc., d/b/a Cab's Pub and Eatery, 992 Arcade Street.

Adopted Yeas - 6 Nays - 0

26. Resolution – 07-592 – Approving adverse action against the Cigarette/Tobacco, Alarm Permit (New), Malt Off Sale, Retail Food (C) Grocery 1001-2000 sq. ft., and Gas Station license applications submitted by Gas It For Less, Inc., d/b/a Gas It For Less & West 7th Market, 675 7th Street West.

Adopted Yeas - 6 Nays - 0

27. Resolution – 07-593 – Waiving the 45-day notification requirement and granting, with conditions, an on sale malt (3.2) license to Kenkayba's Place, 864 University Avenue West.

Adopted Yeas - 6 Nays - 0

28. Resolution – 07-594 – Amending the spending and financing plans of the Davern-West 7^{th Street} to Shepard Road project by adding sewer and water financing and transferring MSA from the Ayd Mill Off-Road Trail project.

Adopted Yeas - 6 Nays - 0

29. Resolution – 07-595 – Authorizing renewal of a no-fee, 10-year lease with the Minnesota Department of Natural Resources (DNR) for a City recreation trail on DNR property near the East Metro Area Fisheries Office.

Adopted Yeas - 6 Nays - 0

30. Resolution – 07-596 – Approving a contract with City Design Group to provide services for the State of Minnesota, Second Judicial District, for remodeling work in Room 130 of the Courthouse.

Adopted Yeas - 6 Nays - 0

31. Resolution – 07-597 – Approving a contract with City Design Group for laying out space for Ramsey County Corrections in various locations in Ramsey County.

Adopted Yeas - 6 Nays - 0

32. Resolution – 07-598 – Authorizing the proper City officials to enter into a cooperative construction agreement with Ramsey County for reconstruction of White Bear Avenue at Maryland Avenue.

Adopted Yeas - 6 Nays - 0

33. Preliminary Order – 07-599 – In the matter of the operation and maintenance costs for the Arcade/Case and the Grand/Snelling parking lots for 2009, and setting date of public hearing for August 15, 2007. [File No. 18744 & 18746] (GS 3041014)

Adopted Yeas – 6 Nays – 0

34. Resolution Approving Assessment – 07-600 – In the matter of the assessment of benefits, cost, and expenses for the Arcade/Case and the Grand/Snelling parking lots operation and maintenance costs for 2008, and setting date of public hearing for August 15, 2007. [File No. 18744 & 18756] (GS 3041016)

Adopted Yeas - 6 Nays - 0

35. Resolution Approving Assessment – 07-601 – In the matter of the assessment of benefits, cost, and expenses for summary abatement (property clean-up) on private properties from May 17 to June 12, 2007 [J0709A]; providing weekly garbage hauling services from May 17 to June 12, 2007 [J0709G]; and setting date of Legislative Hearings for July 24, 2007 and City Council public hearings for August 15, 2007. (GS 3041156)

 $Adopted \qquad Yeas-6 \qquad Nays-0$

FOR DISCUSSION

36. Resolution – 07-477 – Adopting a Summary of the Highland Park/District 15 Neighborhood Plan as an addendum to the City's Comprehensive Plan. (Laid over from June 6)

Councilmember Harris moved to lay over two weeks as the staff person was not available for the meeting.

Laid over to July 18 Yeas -6 Nays -0

37. Resolution – 07-555 – Subordinating the City's STAR Loan to \$400,000 of additional debt for improvements to the McNally-Smith Music College. (Laid over from June 27) Councilmember Thune moved to lay over two week as he was still awaiting additional information on the matter.

Laid over to July 18 Yeas – 6 Nays - 0

ORDINANCES

NOTE: AN ORDINANCE IS A CITY LAW ENACTED BY THE CITY COUNCIL. IT IS READ AT FOUR SEPARATE COUNCIL MEETINGS AND BECOMES EFFECTIVE AFTER PASSAGE BY THE COUNCIL AND 30 DAYS AFTER PUBLICATION IN THE SAINT PAUL LEGAL LEDGER.

- 38. Third Reading 07-547 An ordinance memorializing action granting the application of Firstborne Properties to rezone property from R4 (One-Family Residential) to B2 (Community Business) at 1337 Pascal Street North (southwest corner at Bison Avenue). [ZF 07-027-041] (Public hearing held May 16, 2007)
 Laid over to July 11 for final adoption
- 39. Second Reading 07-566 An ordinance amending Section 411.04 of the Saint Paul Legislative Code to limit Class B and C Entertainment licenses to establishments holding Intoxicating Liquor licenses. (Department of Safety and Inspections report will be given)

Rachel Gunderson, Assistant City Attorney representing the Department of Safety and Inspections (DSI), presented a staff report. The problem DSI is seeing is what they believe to be a misapplication of state law. When there are wine and beer licenses, it is required that they be what state law defines as a menu item. DSI has interpreted that to mean "with food." There are some establishments that have wine and beer licenses and Entertain B licenses so they are basically operating as a night club. There are problems in the neighborhoods with security and underage service, so DSI drafted this ordinance to address the problem of the wine and beer night clubs.

Councilmember Benanav asked what this means and what impact it would have on those establishments. Ms. Gunderson responded that the ordinance says if an establishment only has a wine and beer license, they are only entitled to an Entertainment A license.

The difference between an Entertainment A license and Entertainment B license is the dance floor. There can be music with Entertainment A but not dancing. A full liquor license is required in order to have dancing.

Kristina Schweinler, Department of Safety and Inspections, appeared and said this Rental Hall would not require an Entertainment License as they are a rental facility-assembly place of business that would allow dancing by having the Rental Hall License.

Councilmember Harris asked about a music club. Ms. Schweinler responded that it would be a cabaret license which would allow for entertainment but no alcohol. Also, more parking would have to be provided with a B license.

Laid over to July 18 for third reading/public hearing

The meeting was recessed from 3:45 to 5:30 p.m. Present – 6 Absent – 1 – Helgen (excused)

PUBLIC HEARINGS

40. Third Reading – 07-526 – An ordinance amending Chapter 33.07 of the Saint Paul Legislative Code to provide for variances of corner clearance requirements.

No one appeared in opposition; Councilmember Montgomery moved to close the public hearing. Yeas -6 Nays -0 Laid over to July 11 for final adoption

41. Resolution – 07-602 – Approving the application of The Cherry Pit for a sound level variance in order to present amplified music, with limitations, from 8:00 p.m. to 12:00 midnight on July 14, 2007 at 735 White Bear Avenue North.

Bill Gunther, Department of Safety and Inspections, appeared and said one letter was received with questions.

No one appeared in opposition; Councilmember Bostrom moved to close the public hearing and approval.

Adopted Yeas - 6 Nays - 0

42. Resolution – 07-603 – Approving the application of Mike Feddersen for a sound level variance in order to present amplified music, with limitations, from 5:00 p.m. to 12:00 midnight on August 18, 2007 at 45 Lexington Parkway.

Bill Gunther, Department of Safety and Inspections (DSI), stated the applicant was told that DSI could only recommend an 11:00 p.m. ending time.

Councilmember Montgomery moved to amend the resolution to 11:00 p.m.

$$Yeas - 6$$
 Nays $- 0$

No one appeared in opposition; Councilmember Montgomery moved to close the public hearing and approval as amended

Adopted as amended Yeas
$$-6$$
 Nays -0

43. Resolution – 07-604 – Approving the application of Bridget Berigan for a sound level variance in order to present amplified music from 5:00 p.m. to 10:00 p.m. on July 28, 2007 at 1080 Hoyt Avenue.

No one appeared in opposition; Councilmember Montgomery moved to close the public hearing and approval.

Adopted
$$Yeas - 6$$
 $Nays - 0$

44. Resolution – 07-605 – Approving the application of Puppeteers of America/ National Puppetry Festival for a sound level variance in order to present amplified music, with limitations, from 9:30 p.m. to 11:30 p.m. on July 17, 2007 at Concordia College, 275 Syndicate Street North.

No one appeared in opposition; Councilmember Montgomery moved to close the public hearing and approval.

Adopted
$$Yeas - 6$$
 $Nays - 0$

45. Resolution – 07-606 – Authorizing the City to grant a permanent pipeline easement and temporary construction easement to Northern States Power Company, d/b/a Xcel Energy, and to accept compensation for the easements and related tree replacement costs located at Lilydale Park.

No one appeared in opposition; Councilmember Thune moved to close the public hearing and approval.

Adopted
$$Yeas - 6$$
 $Nays - 0$

46. Final Order – 07-607 – In the matter of reconstructing sidewalks on the south side of Exchange Street West from St. Peter Street to Wabasha Street North [S0707]; on the north side of Kellogg Boulevard East from Cedar Street to Minnesota Street [S0708]; on the east side of Minnesota Street from Seventh Street East to Ninth Street East [S0709]; and on the south side of Sixth Street East from Robert Street North to Jackson Street [J0710].

No one appeared in opposition; Councilmember Thune moved to close the public hearing and approval.

Adopted Yeas - 6 Nays - 0

47. Public hearing to consider the application of Teresa Deming to rezone property at 1539-1541 Lincoln Avenue, between Saratoga Street and Snelling Avenue, from R4 (one-family residential) to RT2 (townhouse residential). (ZF 07-074-940)

Patricia James, Department of Planning and Economic Development, presented a staff report stating that the property was converted to a triplex without building permits. Staff recommended denial because it was firmly established that the conversion did not take place more than ten years ago so, therefore, they cannot get a non-conforming use permit. Their only alternative is to rezone the property to RT2. In order to do that, the minimum lot size for RT2 is 9,000 sq. ft. which they don't have. Staff recommended denial. The Planning Commission recommended approval of the variance and that has now been appealed. The Zoning Committee also recommended approval. Ms. James noted that mail was received in opposition to the rezoning. The Council must determine whether or not the property should be rezoned. If it is not rezoned to RT2, it will no longer be a triplex.

Keven and Teresa Deming, St. Louis Park, MN, appeared and stated when they purchased the property it was already converted to a triplex and they assumed everything had been approved since it was in the area of other multi-family dwellings. During an inspection, they were notified that a permit was not issued to make the building a triplex so they applied for a permit. Prior to the purchase, there was some opposition from the standpoint of too many people being in the dwelling so they reduced the number of residents from nine to six. Mr. Deming explained the changes and upgrades they have made to the structure and said they will be living at the property. Teresa Deming said she has worked with Fire to correct any violations.

Jim Sheehan, 1535 Lincoln, said he watched the Deming's son convert the building into a triplex so he contends it was not a triplex when it was purchased by the Demings. When he was shopping for a house in this area, he said he did not want to be near rental property and when he purchased his house, it was his understanding that this was a single family dwelling even though he knew there were two units. He noted an e-mail that was submitted to Patricia James from Mark and Lucy Gehan, neighbors, in opposition.

Philip Jacobs, 1557 Goodrich Avenue, said he was representing several neighbors who are opposed to the triplex and who submitted letters to Patricia James and Councilmember Pat Harris. He expressed concern about spot zoning, encroachment, and density.

Doug Taylor, 1543 Lincoln Avenue, said he was opposed because parking is not good on that street. At this time, two parking spaces in the garage are not usable which leaves only five parking spaces in the back.

Councilmember Harris moved to close the public hearing. Yeas - 6 Nays - 0

Councilmember Harris said he has heard a lot of concerns from the neighbors with regard to student housing in the neighborhood, parking, noise, etc., and said he understands the concerns of the neighbors with regard to a triplex. Staff was correct with their determination and that it's potentially a spot zoning issue and minimum lot size issue, Harris said.

Councilmember Harris moved to deny the application on the grounds that there was error in the findings of facts and conclusions of the Planning Commission, and to adopt the recommendations of staff.

Councilmember Benanav concurred with Harris and said by allowing it to become a triplex, there is an opportunity for additional problems.

Motion of Intent – Application Denied Yeas - 6 Nays – 0

48. Public hearing to consider the appeal of Edina Properties, Inc., Jenifer Kent, to a decision of the Board of Zoning Appeals, which determined that Noodles & Company restaurant was a fast-food restaurant. (ZF 07-093604) (Application for 777 Grand Avenue)

John Hardwick, Department of Safety and Inspections (DSI), presented a staff report. In April of 2007, Noodles, Inc. submitted plans to the City to establish a restaurant at 777 Grand Avenue. After reviewing the plans, the Zoning Administrator determined that Noodles & Company was not a fast food restaurant and, therefore, would be a permitted use at that location. The Summit Hill Association (District 16 Planning Council) appealed that decision and in May of 2007, the Board of Zoning Appeals held a public hearing to consider the Summit Hill Association appeal. At that time, staff presented a report to the Board with a recommendation for denial of the appeal. After taking testimony from the appellants and others present, the Board voted 6-0 to grant the appeal and found that the Zoning Administrator erred in his determination and that it was a fast food restaurant. Edina Properties, the owner of the property, has now filed an appeal of the BZA's decision claiming that the Board erred in their determination and that the Zoning Administrator's decision was correct.

Mike Drysdale, 50 South Sixth Street, Minneapolis, MN, attorney with Dorsey & Whitney, representing Edina Properties, appeared. He noted that Mr. Lund, owner of Edina Properties, Tim Bloom, a Broker for Noodles, as well as other people in favor of

the project both as businesses and residents, were present at the Council meeting. He noted that the vote was 5-2 to overturn the staff recommendation as opposed to 6-0 as stated by Mr. Hardwick. As a matter of law, Mr. Drysdale said one has to look at the plain language of the ordinance, the purposes, and if anything is discovered that is ambiguous about the ordinance, that has to be construed in favor of the property owner. This is a particularly high standard when it is considered that it's a permitted use that's at issue where there are not the kinds of conditions that can be put on for a conditional use. With respect to the interests of the neighborhood and local businesses, he distributed a handout as well as a petition. He talked about the legal issues, listed the criteria for what factors determine fast food and showed pictures of various Noodles restaurants.

Mr. Drysdale said this issue has a significant impact not just for this location but also for other businesses that might want to locate on Grand Avenue as well as existing businesses. He asked the Council to look carefully at what the Board did, look carefully at the language of the ordinance, consider the presumptions and rules of instruction that apply, and overturn the decision of the Board of Zoning Appeals.

Appearing in opposition was:

Maureen Flahaven, 1073 Lincoln Avenue, Chair of the Zoning and Land Use Committee of the Summit Hill Association, District 16 Planning Council, who maintained that Noodles & Company is a fast food restaurant and is not a permitted use in a B2 district. She outlined the criteria for deeming it fast food.

Councilmember Benanav asked how Noodles differs from Cafe Late, D'Amico, or Chipotle which are all on Grand Avenue saying they turn over a lot of customers very quickly. Ms. Flahaven said the many restaurants were grandfathered in. She cited issues that make it a problem.

Elizabeth Wefel, President, Summit Hill Association, said they have concerns about the serious and growing parking deficits as well as the safety of residents in the neighborhood. She talked about the definition of fast food under the Zoning Code.

Todd Wichman, 870 Osceola Avenue, member of the Summit Hill Association Zoning and Land Use Committee, talked about the impact on adjoining properties including traffic and pedestrian safety were Noodles & Company permitted to locate on Grand Avenue.

Nancy Breymeier, business owner at 917 Grand Avenue, representing Metro Independent Business Alliance, said they contend Noodles is a fast food restaurant and does not meet the zoning restrictions on Grand Avenue. She listed reasons why Noodles & Company is not a good match for Grand Avenue.

Mark Sutherland, Vice President of the Summit Hill Association, showed a picture of a condiment bar inside three Noodles Restaurants he visited noting that this contradicts what Noodles representatives said that they did not have condiment bars.

Councilmember Thune moved to close the public hearing. Yeas - 6 Nays - 0

Councilmember Thune stated that the Board of Zoning Appeals (BZA) made a determination that Noodles is a fast food restaurant and is not allowed in this zoning district. The Council would have to find an error made by the BZA in order to overturn their decision. Mr. Thune said this is not about trying to analyze what other businesses and stores are like compared to Noodles. Things that happened in the past, whether good or bad, have compounded to make Grand Avenue what it is. It is not a good business practice to have the issues Grand Avenue currently has with parking, curb cuts, and traffic. The zoning law protects businesses and residences from over consumption of services and over capacity.

Councilmember Thune said he finds no error in the BZA's decision and moved to deny the appeal.

Motion of Intent – Appeal Denied Yeas – 5 Nays –1 (Bostrom)

49. Public hearing to consider the appeal of Kawaljit Bhatia/Maharaja's to a decision of the Board of Zoning Appeals granting a variance to allow maneuvering for off-street loading within the public right-of-way at 211 West Seventh Street (Cossetta's). (ZF 07-095865)

John Hardwick, Department of Safety and Inspections, gave a staff report. In April, 2007, Cossetta's Italian Market and Pizzaria applied to the Board of Zoning Appeals (BZA) for a variance in order to build an addition onto their existing restaurant at 211 West Seventh Street. The addition would require Cossetta's to provide off-street loading where vehicles that are delivering to the restaurant were not required to maneuver in the public right-of-way. The BZA conducted a public hearing on the request, staff presented a report with a recommendation for approval, and the Board took testimony from the applicant and from people present. The Board granted the appeal on a 6-0 vote. At the BZA hearing, the District 9 Community Council had not made a recommendation but since that time they made a recommendation for approval of the variance. Mr. Hardwick noted that he received a letter of support on this date from the owner of Wescott's Station Antiques. The owners of Maharaja's have appealed the BZA's decision claiming that the Board erred in their findings of facts and procedures.

William Lubov, attorney representing Maharaja's and Kawaljit Bhatia, read a letter from Mr. Bhatia into the record.

Councilmember Thune asked what Maharaja's is objecting to. Mr. Lubovresponded that he thinks there is a mis-characterization even in the line item on the agenda. The variance to allow maneuvering for off-street loading is a mis-statement of what is going on. He said a variance cannot be granted in a vacuum. What is occurring is that Cossetta's intended plan is to vacate its entire parking lot to expand its business two-fold by bringing in a separate business to operate on the same location thereby taking away all parking that Cosetta's has at its current location. They own another parking lot directly behind Maharaja's to which they intend to utilize the alley that has been vacated on one side for the Holiday Inn for the express purpose of allowing their customers to enter and exit the parking lot directly behind Maharaja's which will negate any possibility of Maharaja's, its owner, its tenants, its business tenants, and residents to operate and utilize their parking facilities behind their business. He talked about the Zoning Code and why the variance is not appropriate. A street and not an alley will be created by allowing this to happen. The alley is the only avenue from that direction because the rest of the alley has been vacated because of the Holiday Inn. This will move a traffic flow of hundreds of cars each day into an alley that has only one avenue of entrance and exit. Any possibility of parking access for Maharaja's customers would be taken away.

Council President Lantry clarified for Mr. Lubov that the only issue at this time was rather or not a variance is granted to Cossetta's to back in off of Chestnut Street and not the addition to Cossetta's. Mr. Lubov responded that they can back in under the current arrangement without vacating the parking lot.

Mr. Bhatia, owner of Maharaja's, said they would have liked to have met with someone from Cossetta's or the City as no one has approached them and asked if it would affect them.

Appearing in opposition to the appeal were:

Dave Cossetta, Cossetta's Restaurant, who said they currently back into a public alley and receiving is done off of a public street. Under their variance request, they are asking to back into a private loading dock and take the traffic off the public street and off the public alley. He noted that City staff supports the variance as does the Planning Commission.

Joe Finley, 1157 Summit Avenue, said he has been involved with David Cossetta and this project from the outset. He disputed the statement by Mr. Lubov that there will be no possible access to Maharaja's parking lot after Cossetta's expansion occurs. Mr. Finley said everyone will have equal access as people will come in the alley and go out on Smith Avenue.

A letter was sent from Mr. Bhatia's attorney to Dave Cossetta containing inconsistent statements, Finley said.

Pat Boemer, owner of McGovern's (across the street from Cossetta's), spoke in support of the variance saying he feels this is good for the whole area and there's more congestion when the trucks are on the street.

Councilmember Thune moved to close the public hearing. Yeas -6 Nays -0 Councilmember Thune said he feels this will actually be a better situation, that it will alleviate a problem and he found no reason to approve the appeal.

Councilmember Thune moved to deny the appeal.

Motion of Intent – Appeal Denied Yeas – 6 Nays – 0

50. Resolution – 07-608 – Ordering the owner to remove the building(s) at 78 Sycamore Street East within fifteen (15) days from adoption of resolution. (Legislative Hearing Officer recommends approval)

Marcia Moermond, Legislative Hearing Officer, said this was a no-show Legislative Hearing. She questioned how the building became vacant and was informed that there was water running inside the building and the water was shut off which lead to condemnation. It was a vacant building. Given all the information she had, that no bond has been posted, the code compliance of record is a couple of years old but there is no work plan or financial plan to go with it, she said she had no option but to recommend that the building be removed within 15 days with no option for repaid.

No one appeared in opposition; Councilmember Thune moved to close the public hearing and approval.

Adopted Yeas - 6 Nays - 0

- 51. Resolution Ratifying Assessment 07-609– In the matter of the assessment of benefits, cost, and expenses for summary abatements (property clean-up) on private properties from April 12 to April 27, 2007 [J0707A]; weekly garbage hauling services from April 18 to April 26, 2007 [J0707G]; demolition of a vacant building in April, 2007[J0706C); and removing diseased elm trees from 519 Farrington Street during the winter season 2006/2007 [0703T]. (Legislative Hearing Officer recommends the following:
 - 1140 Arkwright Street (J0707A) approve the assessment;
 - 431 Charles Avenue (J0707A) delete the assessment;
 - 431 Charles Avenue (J0707G) delete the assessment;
 - 610 Desnoyer Avenue (J0707A) delete the assessment;
 - 1107 Edgerton Street (J0707A) approve the assessment;
 - 519 Farrington Street (J0703T) approve the assessment;
 - 859 Marion Street (J0707A) approve the assessment and spread the payments over five (5) years;

<u>1067 Oxford Street North</u> (J0707A) - approve the assessment;

186 Prescott Street (J0707A) - approve the assessment;

1657 Selby Avenue (J0707A) - approve the assessment;

771 Seventh Street West (J0707A) - delete the assessment;

818 Sherburne Avenue (J0707A) - approve the assessment;

818 Sherburne Avenue (J0707G) - approve the assessment;

643 Winslow Avenue (J0707A) - approve the assessment.)

667 Sims Avenue (J0707A) - approve the assessment;

678 Snelling Avenue North (J0707A) - approve the assessment;

1220 Sylvan Street (J0707A) - delete the assessment if the owner provides the waiver prior to July 5; Laid over to July 18 City Council Public Hearings
1449 University Avenue West (J0707A) - delete the assessment if the owner provides the waiver prior to July 5 Laid over to July 18 City Council Public

<u>Hearings;</u> 1744 <u>University Avenue West</u> (J0707A) - delete the assessment; and

Marcia Moermond, Legislative Hearing Officer, stated that 859 Marion was a no-show Legislative Hearing but the property owner was present to speak to the Council. The normal process would be for Council to refer the property owner back to a Legislative Hearing; however, Ms. Moermond said she would not make that request due to threats made to City staff. The assessment was for clean up of paper, rubbish and debris in the yard, on the boulevard, and on the front porch. The orders were mailed on April 6, 2007, the compliance date was April 12, 2007, and the work was done by City Parks on April 16, 2007. The cost of the assessment was \$380.00. There was a \$316 charge for the cleanup and administrative charges in the amount of \$70.00.

Amy Flaherty, Catholic Charities Care Manager, representing Reverend William Hillebrand, appeared. She said she has been working with Rev. Hillebrand since January of this year.

Reverend Hellebrand, International Ministry of Fellowship, appeared and acknowledged that he received a letter which he thought applied to the outside of the house and to which he complied. He said he did not feel it applied to the porch and he read a description of the porch. He read a list of things that were in boxes, and construed as garbage, and removed from his property. He questioned how things could be seized from an enclosed porch.

Ms. Flaherty said they realize they were late in the appeal process and asked for the opportunity to go back and do it properly.

Council President Lantry explained that the only issue before the Council was whether or

not the City, after giving proper notice, removed items from Mr. Hillebrand's property. She said that Rev. Hillebrand was property notified, he did not clean up the property so the City cleaned it up.

Councilmember Thune moved to close the public hearing. Yeas - 6 Nays - 0

Councilmember Bostrom moved approval with the exception of 859 Marion which he moved to lay over one week.

Marcia Moermond, Legislative Hearing Officer, said it could be referred back to a Legislative Hearing to get all the facts. She outlined options for the assessment.

Councilmember Benanav said he had reservations about sending this matter back to a Legislative Hearing since personal threats had previously been made. Councilmember Thune added that he had reservations with prolonging the issue and suggested a decision be made at this meeting.

Council President Lantry suggested the payments be spread over five years so it won't be a large financial burden and that Rev. Hillebrand continue to work with Catholic Charities in an attempt to solve the problem rather than prolong it.

Ms. Moermond said there is also a disability issue involved and one of the concerns brought up by the Reverend had to do with the value of his possessions that were removed from the porch. The venue for dealing with improper seizure of items by the City would be to file a claim against the City. That would be a totally separate issue from what is before the Council, Moermond said.

Councilmember Thune moved approval of the resolution and to spread the payments for 859 Marion over five years.

Councilmember Bostrom withdrew his previous motion.

Adopted as amended (per the recommendation of the Legislative Hearing Officer) Yeas - 6 Nays - 0

52. Resolution Ratifying Assessment – 07-610 – In the matter of the assessment of benefits, cost, and expenses for summary abatement for the excessive consumption of inspection services for property code violations billed during November 27, 2006 to January 30, 2007 [J0701E], and towing abandoned vehicles from private property during February 2007 [J0702V]. (Legislative Hearing Officer recommends the following:

<u>457 Charles Avenue</u> (J0701E) - lay over to the July 10 Legislative Hearing and July 18 City Council Public Hearing;

128 Cook Avenue East (J0701E) - approve the assessment and spread the payments over two (2) years;

957 Cook Avenue East (J0701E) - approve the assessment;

83 Isabel Street East (J0701E) - approve the assessment;

733 Jessamine Avenue East (J0702V) - approve the assessment;

1633 Sherwood Avenue (J0701E) - delete the assessment;

<u>123 Sycamore Street West</u> (J0701E) - lay over to the July 10 Legislative Hearing and July 18 City Council Public Hearings; and

829 Third Street East (J0701E) – lay over to the July 10 Legislative Hearing and July 18 City Council Public Hearings)

Marcia Moermond, Legislative Hearing Officer, requested that the Council refer 829 East Third Street to a Legislative Hearing on July 10 and City Council public hearing on July 18.

No one appeared in opposition; Councilmember Bostrom moved to close the public hearing and approval as amended.

Adopted as amended (per the recommendation of the Legislative Hearing Officer) Yeas - 6 Nays - 0

53. Appeal of Loren Myhre to a Revocation of Certificate of Occupancy, which includes Condemnation, for property at 619 North Street (units 2 and 3); and Appeal of Darryl Washington to a Revocation of Certificate of Occupancy, which includes Condemnation, for property at 619 North Street (unit 4). (Legislative Hearing Officer recommends denying the appeal and granting an extension to vacate the building from June 18 to July 9.)

Marcia Moermond, Legislative Hearing Officer, stated that Fire Prevention has lifted the condemnation as the principle violations leading to the condemnation have been corrected although other items remain. She recommended denial of the appeal

No one appeared in opposition; Council President Lantry moved to close the public hearing and deny the appeal grant an extension to July 9, 2007. Yeas -6 Nays -0

54. Appeals of Troy Allison to Summary Abatement Orders for properties at 1522-1524

<u>Carroll Avenue and 1350 Thomas Avenue</u>. (Legislative Hearing Officer recommends denying the appeal for the Summary Abatement Order for 1522-1524 Carroll Avenue.

The Summary Abatement Order issued to 1350 Thomas Avenue was issued in error and orders were withdrawn by DSI-Code Enforcement)

No one appeared in opposition; Councilmember Montgomery moved to close the public hearing and deny the appeal.

Appeal denied for the Summary Abatement Order for 1522-1524 Carroll Avenue.

Yeas - 6 Nays - 0

55. Appeal of Deborah Eagan to a Summary Abatement Order and Vehicle Abatement Order for property at 1820 Reaney Avenue East.

(Withdrawn)

Councilmember Thune moved to adjourn the meeting. Yeas -6 Nays -0

ADJOURNED at 7:55 P.M.
Kathy Lantry, Council President
September 5, 2007 Minutes approved by Council